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November 11, 2021

Via ECF

Plaintiff shall respond to Defendants' letter by November 16, 2021.

Honorable John P Cronan
United States District Court Judge
Southern District of New York
United States Courthouse
500 Pearl Street Rm. 1320
New York, New York 10007

SO ORDERED.

Date: November 12, 2021
New York, New York

JOHN P. CRONAN
United States District Judge

Re: Marianela Susana v. NY Waterway Tours LLC et al.
1:20-cv-00455
HBN File No. 18.0049

Dear Judge Cronan,

We represent the Defendants and write, pursuant to Rules 5C and 6.A. of your Honor's Individual Rules, to request an Order: 1) pursuant to FRCPs 35 and 37(b), compelling Plaintiff Marianela Susana to attend an FRCP 35 IME, or risk sanctions up to and including dismissal of this case with prejudice and awarding costs for failing to appear at her scheduled November 8, 2021, IME; 2) pursuant to FRCPs 26 and 37 (b)(1), compelling Plaintiff's witness and daughter Bridgette Escolasticos to attend a deposition, or risk contempt of court and preclusion of Ms. Escolasticos as a witness at trial and striking of any statements made by Ms. Escolasticos; and 3) extension of the fact discovery period until December 15, 2021 for the sole purpose of conducting Ms. Susana's IME and Ms. Escolasticos's deposition.

As the Court may recall, defendants submitted a letter motion on September 22, 2021 (Doc 48) seeking an order barring plaintiff's daughter Ms. Escolasticos from attending Plaintiff's IME due to Ms. Escolasticos's disruptive behavior that prevented completion of plaintiff's first

scheduled IME on September 13, 2021. Plaintiff's counsel did not oppose this motion and the Court granted the Order (Doc. 50) and Ordered that the IME take place by November 12, 2021 (Doc. 48). Subsequently, Defendants informed Plaintiff's counsel by letter dated October 12, 2021 (attachment A) that Plaintiff's rescheduled IME was to take place on Monday, November 8, 2021 at 4:30 p.m. Plaintiff's Counsel was reminded of this IME by email on November 1 and 3, 2021 (Attachment B). Nevertheless, Plaintiff did not show up for her IME, nor did we receive any communication from Plaintiff's Counsel attempting to excuse her lack of attendance; we did receive a \$300 "no show" fee from the IME Doctor (Attachment C). Consequently, we seek an Order from this Court pursuant to FRCP 35 compelling Plaintiff's attendance at an IME to be scheduled on or before December 15, 2021, or risk sanctions under FRCP 37(b) up to and including dismissal of this action; awarding defendants \$300 for plaintiff's failure to attend her November 8, 2021 IME and extending Your Honor's previous Order excluding Ms. Escolasticos from the IME.

Secondly, we seek an Order pursuant to FRCPs 26 and 37 (b)(1), compelling Plaintiff's witness and daughter Bridgette Escolasticos to attend a deposition. Previously, we sought leave from the Court to serve Ms. Escolasticos with a subpoena for her deposition by certified mail, which the Court granted. (Doc. 38). However, despite the fact that Ms. Escolasticos was served, she failed to appear for her October 8, 2021 deposition, or to contact Defendants in any way. Plaintiff's Counsel also failed to appear for the deposition or contact Defendants, despite the fact that he was provided with a copy of the subpoena and advised on three subsequent occasions that Defendants sought to depose Ms. Escolasticos. Attached as Attachment D is a copy of the deposition transcript recording Ms. Escolasticos's failure to attend.

Plaintiff and her daughter Ms. Escolasticos clearly are aligned, given their relationship, the fact that they live at the same address, and the fact that Ms. Escolasticos attempted to obstruct Plaintiff's first, aborted IME. Ms. Escolasticos' testimony is also important to Plaintiff's case, as Plaintiff has listed Ms. Escolasticos as a witness to her accident and has produced her statement concerning the accident. Defendants are entitled to explore her proposed testimony through the discovery process. Therefore we seek an Order by the Court compelling the deposition of Ms. Escolasticos on or before December 15, 2021, and stating that failure to comply will a) subject Ms. Escolasticos to sanctions for contempt of court pursuant to FRCP 37 (b)(1) and b) result in preclusion of Ms. Escolasticos as a witness at trial and preclusion at trial of any statements made by her.

Finally, Defendants seek an extension of the fact discovery period until December 15, 2021 for the sole purpose of conducting Ms. Susana's IME and Ms. Escolasticos's deposition.

Defendants conferred with Plaintiffs' Counsel on November 11, 2021, at 2:30 p.m. to advise Plaintiff's counsel of Defendants intentions to seek leave of court to depose Ms. Escolastico and to conduct and IME of Ms. Susana.

Very Truly Yours,
HILL, BETTS & NASH LLP.

/s/ Adam M. Wernicke
Adam Wernicke, Esq.

cc: Ryan S. Goldstein via ECF.
Bridgette Escolastico via certified mail [address redacted]